

Jul 09, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DENNA L. J.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

NO: 1:18-CV-3121-FVS

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 12, 17. This matter was submitted for consideration without oral argument. Plaintiff is represented by attorney D. James Tree. Defendant is represented by Special Assistant United States Attorney Brett E. Eckelberg. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, Plaintiff's Motion, ECF No. 12, is denied and Defendant's Motion, ECF No. 17, is granted.

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~ 1

## JURISDICTION

Plaintiff Denna L. J.<sup>1</sup> (Plaintiff), filed for disability insurance benefits (DIB) and supplemental security income (SSI) on May 29, 2014, alleging an onset date of February 10, 2010.<sup>2</sup> Tr. 255-62. Benefits were denied initially, Tr. 152-58, and upon reconsideration, Tr. 161-71. Plaintiff appeared at a hearing before an administrative law judge (ALJ) on May 31, 2017. Tr. 53-88. On July 26, 2017, the ALJ issued an unfavorable decision, Tr.16-30, and on June 8, 2018, the Appeals Council denied review. Tr. 1-5. The matter is now before this Court pursuant to 42 U.S.C. § 405(g); 1383(c)(3).

## BACKGROUND

The facts of the case are set forth in the administrative hearing and transcripts, the ALJ's decision, and the briefs of Plaintiff and the Commissioner, and are therefore only summarized here.

Plaintiff was 49 years old at the time of the hearing. Tr. 60. She graduated from high school and attended some trade school for computers and accounting. Tr.

---

<sup>1</sup>In the interest of protecting Plaintiff's privacy, the Court will use Plaintiff's first name and last initial, and, subsequently, Plaintiff's first name only, throughout this decision.

<sup>2</sup>At the hearing, Plaintiff amended the alleged onset date to March 30, 2011. Tr. 58-59.

1 60. She has work experience as a cleaner, census taker, crowd manager, caregiver,  
2 telemarketer, waitress, nursing assistant, and childcare provider. Tr. 60-62. She  
3 testified that when she is stressed or anxious, she “can’t think right,” loses  
4 concentration, and cannot finish tasks. Tr. 63. Being around a lot of people causes  
5 her to be anxious and she cannot breathe. Tr. 63-64. Sometimes she has anxiety at  
6 home. Tr. 72-73. She has missed work due to depression, although medication  
7 helps. Tr. 63, 68. She has breakthrough depression about ten days per month. Tr.  
8 71. When she is depressed, she does not want to see or talk to anyone. Tr. 72.

9 Plaintiff also testified that she is prevented from working by pain in her back  
10 and knee. Tr. 65. If she does more than five or ten minutes of activity, she  
11 experiences so much pain that she is “down for days.” Tr. 66. She lies down to  
12 relieve symptoms three to four times a day for an hour or two at a time. Tr. 74-75.

### 13 STANDARD OF REVIEW

14 A district court’s review of a final decision of the Commissioner of Social  
15 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
16 limited; the Commissioner’s decision will be disturbed “only if it is not supported by  
17 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158  
18 (9th Cir. 2012). “Substantial evidence” means “relevant evidence that a reasonable  
19 mind might accept as adequate to support a conclusion.” *Id.* at 1159 (quotation and  
20 citation omitted). Stated differently, substantial evidence equates to “more than a  
21 mere scintilla[,] but less than a preponderance.” *Id.* (quotation and citation omitted).

1 In determining whether the standard has been satisfied, a reviewing court must  
2 consider the entire record as a whole rather than searching for supporting evidence in  
3 isolation. *Id.*

4 In reviewing a denial of benefits, a district court may not substitute its  
5 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156  
6 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one  
7 rational interpretation, [the court] must uphold the ALJ’s findings if they are  
8 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674  
9 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an ALJ’s  
10 decision on account of an error that is harmless.” *Id.* An error is harmless “where it  
11 is inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* at 1115  
12 (quotation and citation omitted). The party appealing the ALJ’s decision generally  
13 bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S.  
14 396, 409-10 (2009).

## 15 FIVE-STEP EVALUATION PROCESS

16 A claimant must satisfy two conditions to be considered “disabled” within the  
17 meaning of the Social Security Act. First, the claimant must be “unable to engage in  
18 any substantial gainful activity by reason of any medically determinable physical or  
19 mental impairment which can be expected to result in death or which has lasted or  
20 can be expected to last for a continuous period of not less than twelve months.” 42  
21 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s impairment must

1 be “of such severity that he is not only unable to do his previous work[,] but cannot,  
2 considering his age, education, and work experience, engage in any other kind of  
3 substantial gainful work which exists in the national economy.” 42 U.S.C. §§  
4 423(d)(2)(A), 1382c(a)(3)(B).

5 The Commissioner has established a five-step sequential analysis to determine  
6 whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§ 404.1520(a)(4)(i)-  
7 (v), 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s  
8 work activity. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If the claimant is  
9 engaged in “substantial gainful activity,” the Commissioner must find that the  
10 claimant is not disabled. 20 C.F.R. §§ 404.1520(b), 416.920(b).

11 If the claimant is not engaged in substantial gainful activity, the analysis  
12 proceeds to step two. At this step, the Commissioner considers the severity of the  
13 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the  
14 claimant suffers from “any impairment or combination of impairments which  
15 significantly limits [his or her] physical or mental ability to do basic work  
16 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),  
17 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,  
18 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.  
19 §§ 404.1520(c), 416.920(c).

20 At step three, the Commissioner compares the claimant’s impairment to  
21 severe impairments recognized by the Commissioner to be so severe as to preclude a

1 person from engaging in substantial gainful activity. 20 C.F.R. §§  
2 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more severe  
3 than one of the enumerated impairments, the Commissioner must find the claimant  
4 disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

5 If the severity of the claimant's impairment does not meet or exceed the  
6 severity of the enumerated impairments, the Commissioner must pause to assess the  
7 claimant's "residual functional capacity." Residual functional capacity (RFC),  
8 defined generally as the claimant's ability to perform physical and mental work  
9 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§  
10 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the  
11 analysis.

12 At step four, the Commissioner considers whether, in view of the claimant's  
13 RFC, the claimant is capable of performing work that he or she has performed in the  
14 past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If the  
15 claimant is capable of performing past relevant work, the Commissioner must find  
16 that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the  
17 claimant is incapable of performing such work, the analysis proceeds to step five.

18 At step five, the Commissioner should conclude whether, in view of the  
19 claimant's RFC, the claimant is capable of performing other work in the national  
20 economy. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this  
21 determination, the Commissioner must also consider vocational factors such as the

1 claimant's age, education and past work experience. 20 C.F.R. §§  
2 404.1520(a)(4)(v), 416.920(a)(4)(v). If the claimant is capable of adjusting to other  
3 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
4 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other  
5 work, analysis concludes with a finding that the claimant is disabled and is therefore  
6 entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

7 The claimant bears the burden of proof at steps one through four above.  
8 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to  
9 step five, the burden shifts to the Commissioner to establish that (1) the claimant is  
10 capable of performing other work; and (2) such work "exists in significant numbers  
11 in the national economy." 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*  
12 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

### 13 ALJ'S FINDINGS

14 At step one, the ALJ found Plaintiff did not engage in substantial gainful  
15 activity since March 30, 2011, the amended alleged onset date. Tr. 15. At step two,  
16 the ALJ found that Plaintiff has the following severe impairments: depressive  
17 disorder; anxiety disorder; PTSD; borderline personality disorder; right knee  
18 degenerative joint disease; lumbar degenerative disk disease; and obesity. Tr. 18.  
19 At step three, the ALJ found that Plaintiff does not have an impairment or  
20 combination of impairments that meets or medically equals the severity of a listed  
21 impairment. Tr. 18.

1 The ALJ then found that Plaintiff has the residual functional capacity to  
2 perform light work with the following additional limitations:

3 she can only occasionally climb ramps, stairs, ladders, ropes, and  
4 scaffolds. She can occasionally balance, stoop, kneel, crouch, and  
5 crawl. She needs to avoid exposure to extreme heat, humidity,  
6 vibration, and hazards. She can understand, remember, and carry out  
7 simple, routine tasks in two-hour intervals. She can have occasional,  
8 brief, and superficial contact with coworkers and the public. She cannot  
9 work in tandem tasks or in tasks requiring a cooperative team effort.

10 Tr. 20.

11 At step four, the ALJ found that Plaintiff is unable to perform any past  
12 relevant work. Tr. 28. At step five, after considering the testimony of a vocational  
13 expert and Plaintiff's age, education, work experience, and residual functional  
14 capacity, the ALJ found there are jobs that exist in significant numbers in the  
15 national economy that Plaintiff can perform such as production assembler,  
16 inspector/hand packager, or collator/operator. Tr. 28-29. Thus, the ALJ concluded  
17 that Plaintiff has not been under a disability, as defined in the Social Security Act,  
18 from March 30, 2011, through the date of the decision. Tr. 30.

## 19 ISSUES

20 Plaintiff seeks judicial review of the Commissioner's final decision denying  
21 disability income benefits under Title II and supplemental security income under  
Title XVI of the Social Security Act. ECF No. 12. Plaintiff raises the following  
issues for review:

1. Whether the ALJ properly evaluated Plaintiff's symptom claims; and



2. Whether the ALJ properly considered the medical opinion evidence.  
ECF No. 12 at 7-24.

## DISCUSSION

### A. Symptom Claims

Plaintiff contends the ALJ improperly rejected her symptom claims. ECF No. 12 at 16-24. An ALJ engages in a two-step analysis to determine whether a claimant's testimony regarding subjective pain or symptoms is credible. "First, the ALJ must determine whether there is objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted). "The claimant is not required to show that her impairment could reasonably be expected to cause the severity of the symptom she has alleged; she need only show that it could reasonably have caused some degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

Second, "[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal citations and quotations omitted). "General findings are insufficient; rather, the ALJ must identify what testimony is not credible and what evidence undermines the claimant's complaints." *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th

1 Cir. 1995); *see also Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he  
2 ALJ must make a credibility determination with findings sufficiently specific to  
3 permit the court to conclude that the ALJ did not arbitrarily discredit claimant’s  
4 testimony.”). “The clear and convincing [evidence] standard is the most  
5 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,  
6 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,  
7 924 (9th Cir. 2002)).

8 In assessing a claimant’s symptom complaints, the ALJ may consider, *inter*  
9 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the  
10 claimant’s testimony or between his testimony and his conduct; (3) the claimant’s  
11 daily living activities; (4) the claimant’s work record; and (5) testimony from  
12 physicians or third parties concerning the nature, severity, and effect of the  
13 claimant’s condition. *Thomas*, 278 F.3d at 958-59.

14 This Court finds that the ALJ provided specific, clear, and convincing  
15 reasons for finding Plaintiff’s statements concerning the intensity, persistence, and  
16 limiting effects of her symptoms less than fully persuasive. Tr. 34.

17 First, the ALJ found Plaintiff’s allegations regarding her mental limitations  
18 are not generally consistent with the amount of treatment she obtained. Tr. 21.  
19 Medical treatment received to relieve pain or other symptoms is a relevant factor in  
20 evaluating pain testimony. 20 C.F.R. §§ 404.1529(c)(3)(iv)-(v); 416.929(c)(3)(iv)-  
21 (v) (2011). The ALJ is permitted to consider the claimant’s lack of treatment in

1 making a credibility determination. *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir.  
2 2005). However, in some cases, it may be inappropriate to consider a claimant's  
3 lack of mental health treatment as evidence of a lack of credibility. *See Nguyen v.*  
4 *Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996). Where the evidence suggests lack of  
5 mental health treatment is part of a claimant's mental health condition, it may be  
6 inappropriate to consider a claimant's lack of mental health treatment as evidence  
7 of a lack of credibility. *Id.* Notwithstanding, when there is no evidence suggesting  
8 a failure to seek treatment is attributable to a mental impairment rather than  
9 personal preference, it is reasonable for the ALJ to conclude that the level or  
10 frequency of treatment is inconsistent with the level of complaints. *Molina*, 674  
11 F.3d at 1113-14.

12       The ALJ noted that despite the mental health symptoms alleged by Plaintiff,  
13 she did not start mental health treatment until May 2016, more than five years after  
14 her alleged onset date of March 30, 2011. Tr. 21, 802-10. The ALJ observed the  
15 before May 2016, Plaintiff made few, if any, complaints of anxiety or other mental  
16 health symptoms, despite testimony that she has had anxiety for 10-15 years and  
17 missed work and was laid off due to depression. Tr. 20-21 (citing Tr. 385-796);  
18 Tr. 63-64. Despite Plaintiff's testimony that she only started treatment for mental  
19 symptoms a year prior to the hearing because she could not afford it, Tr. 64, the  
20 ALJ noted there is no basis in the record to conclude that a lack of resources or  
21 lack of insurance limited Plaintiff's access to mental health treatment.

1 Plaintiff contends the record supports the assertion that she was prevented  
2 from treatment by limited financial resources. ECF No. 12 at 18. Plaintiff cites a  
3 record from March 2014 indicating that she was on Medicaid and had previously  
4 received DSHS benefits, which does suggest a lack of income. However, it also  
5 suggests at least some access to mental health treatment would have been  
6 available. ECF No. 12 at 18; Tr. 515. In Dr. Cline's March 2016 report, also cited  
7 by Plaintiff, she reported that she was not seeing a counselor but had seen one in  
8 the past and found it helpful. Tr. 693. She indicated that she was waiting to "see  
9 what happens with my knee" but did not mention a lack of resources in stating that  
10 she had not been engaged in counseling in years. ECF No. 12 at 18; Tr. 693. The  
11 ALJ's finding is reasonably supported by substantial evidence in the record. In  
12 this case, the lack of mental health treatment before 2006 was reasonably  
13 considered by the ALJ in evaluating Plaintiff's allegations of mental health  
14 limitations.

15 Second, the ALJ found Plaintiff's alleged mental limitations are not  
16 consistent with her reports to providers or her presentation throughout the relevant  
17 period. Tr. 21. In evaluating a claimant's symptom claims, an ALJ may consider  
18 the consistency of an individual's own statements made in connection with the  
19 disability review process with any other existing statements or conduct made under  
20 other circumstances. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). The  
21 ALJ noted Plaintiff's statements to mental health providers are partially consistent

1 with her allegations as they include complaints of depression, anxiety, poor  
2 concentration, anxiety attacks, problems interacting with others, and difficulty  
3 leaving her house and completing daily activities due to depression and anxiety.  
4 Tr. 21-22 (citing Tr. 902-46), 63-64, 72-74. However, the ALJ observed Plaintiff  
5 reported audiovisual hallucinations to mental health providers, which were not  
6 mentioned during her testimony. Tr. 22, 63-64, 72-74, 902, 904.

7 While the ALJ is correct that Plaintiff reported hallucinations during a  
8 psychiatric evaluation in July 2016, Tr. 902-04, she subsequently denied  
9 hallucinations. Tr. 908-09, 915-16, 922-23, 929-30, 935-36. To the extent the  
10 instances cited by the ALJ could be considered an inconsistency between  
11 Plaintiff's testimony and the record, the Court concludes it does not rise to the  
12 level of a clear and convincing reason for giving less weight to Plaintiff's  
13 allegations overall.<sup>3</sup>

14 However, the ALJ also found that Plaintiff's presentation throughout the  
15 treatment record was unremarkable, notwithstanding her testimony and the  
16 symptoms she reported to her providers. Tr. 22. The ALJ observed that Plaintiff

---

17  
18 <sup>3</sup>To the extent this portion of the ALJ's reasoning constituted error, the error was  
19 harmless. *See Carmickle v. Comm'r of Soc. Sec. Admin*, 533 F.3d 1155, 1162 (9th  
20 Cir. 2008); *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir.  
21 2006); *Batson*, 359 F.3d at 1195-97.

1 presented as cooperative and pleasant, with no significant abnormality in affect,  
2 behavior, concentration, memory, mood, psychomotor activity, grooming, hygiene,  
3 eye contact, or speech. Tr. 22 (citing Tr. 445-45, 462, 486, 490, 520, 527, 550,  
4 557, 669, 713, 718, 722-23, 728, 816, 819-20, 825, 829-30, 837, 878, 884, 889,  
5 896, 904, 909, 915-16, 923, 930, 936). Although Plaintiff argues these findings do  
6 not undermine her testimony regarding “debilitating” symptoms, ECF No. 12 at  
7 17, in this case the ALJ provided detailed evidence supporting that conclusion.  
8 Plaintiff contends the ALJ erred by considering treatment records for unrelated  
9 conditions that do not specifically address Plaintiff’s mental health symptoms.  
10 ECF No. 12 at 17. However, Plaintiff’s presentation and report in context other  
11 than mental health treatment settings is relevant to the consistency of her  
12 allegations overall.

13       The ALJ also found that despite Plaintiff’s claim of frequent, severe anxiety  
14 and a recurring inability to leave her house, Plaintiff had no significant difficulty  
15 interacting with her providers or maintaining her appointment schedule due to her  
16 symptoms. Tr. 22 (citing Tr. 520-22, 524-80, 768-96, 813-65, 902-46, 949-60).  
17 Plaintiff contends that, contrary to the ALJ’s assertion, she missed appointments  
18 due to her mental health symptoms. ECF No. 12 at 17. Plaintiff cites two records  
19 from July 2016 indicating she missed an appointment because she was sick and  
20 canceled a second appointment. ECF No. 12 at 17; Tr. 940, 943. There is no basis  
21 in the record to conclude either of these appointments was missed due to mental

1 health symptoms. Plaintiff also notes a September 2016 record indicating Plaintiff  
2 missed an appointment, and when asked about it at her October appointment she  
3 stated she “got scared.” Tr. 927, 934. The meaning of that statement is not  
4 entirely clear from the context, but even if she reported that anxiety prevented her  
5 from attending that appointment, this one instance does not undermine the ALJ’s  
6 conclusion.

7 Plaintiff also contends the ALJ’s finding “disregards the significant  
8 differences between engaging in full-time employment and attending medical  
9 appointments.” ECF No. 12 at 17. Even if a claimant’s activities do not  
10 demonstrate a claimant can work, they may undermine the claimant’s complaints if  
11 they suggest the severity of the claimant’s limitations were exaggerated. *See*  
12 *Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685, 693 (9th Cir. 2009). The  
13 ALJ’s consideration of Plaintiff’s interaction with her providers and ability to  
14 maintain her appointments was reasonable under the circumstances. The ALJ  
15 reasonably concluded this is an inconsistency between Plaintiff’s allegations and  
16 her presentation to providers which makes her allegations less reliable. Thus, this  
17 is a clear and convincing reason supported by substantial evidence.

18 Third, the ALJ found the objective medical evidence is only partially  
19 consistent with Plaintiff’s allegations regarding knee and back pain. Tr. 22.  
20 While subjective pain testimony may not be rejected solely because it is not  
21 corroborated by objective medical findings, the medical evidence is a relevant

1 factor in determining the severity of a claimant's pain and its disabling effects.  
2 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); 20 C.F.R. §§  
3 404.1529(c)(2), 416.929(c)(2) (2011). The ALJ observed that although there are  
4 few records showing complaints of chronic back pain, most treatment notes  
5 indicate no mention of back pain. Tr. 22 (citing e.g., Tr. 867-91); *see* Tr. 867-71  
6 (complaints of back pain 6/13/16); 873-78 (no back pain mentioned 1/8/16); 879-  
7 84 (no back pain mentioned 9/24/15); 885-89 (no back pain mentioned 9/10/15).

8 Similarly, the ALJ noted Plaintiff made no reports of problems sitting due to  
9 knee or back pain, and only once stated that she needed to lie down three to four  
10 times per day for one to two hours at a time for knee or back pain. Tr. 22 (citing  
11 385-92, 408-38, 442-88, 524-80, 687-704, 712-23, 731-66, 867-89). The ALJ  
12 noted that Plaintiff sometimes affirmatively denied back pain. Tr. 22 (citing e.g.,  
13 Tr. 429 (review of systems negative except for foot injury), 432 (no known  
14 physical impairments), 444 (review of systems negative except for diarrhea,  
15 nausea), 449 (denies back pain), 495 (denies back pain), 819 (no complaints of  
16 joint pains, no complaints of muscle pain or weakness). Plaintiff argues these  
17 records involve exams for conditions other than Plaintiff's back. ECF No. 12 at  
18 18. However, that is precisely their value in evaluating whether Plaintiff's  
19 symptom complaints are consistent throughout the record.

20 Additionally, the ALJ found the only imaging in the record shows no more  
21 than mild abnormalities in the spine. Tr. 839-40, and that clinical exams were



1 largely unremarkable regarding Plaintiff's back. Tr. 22 (citing Tr. 444-45 (exam  
2 findings normal except abdominal tenderness), 461-62 (exam findings normal  
3 except left ankle swelling and pain), 486 (exam findings normal except burn on left  
4 hand), 490 (exam findings normal except right arm and hand tenderness), 526-27  
5 (musculoskeletal exam normal, except for plantar fasciitis symptoms), 550  
6 (musculoskeletal exam normal), 556-57 (musculoskeletal exam normal), 669  
7 (lumbar spine exam normal except for tenderness, pain with motion, and pain with  
8 right straight leg test), 713-14 (exam findings normal except for right knee pain),  
9 717-18 (exam of back showed normal range of motion), 722-23 (exam findings  
10 normal except for right knee tenderness), 727-28 (exam findings normal except for  
11 right knee tenderness), 815-37 (multiple musculoskeletal exams with normal  
12 findings), 878 (exam findings normal except for right knee tenderness), 884  
13 (musculoskeletal exam with normal cervical, thoracic, and lumbar spine findings),  
14 889 (musculoskeletal exam notes only abnormal findings regarding right knee),  
15 896 (back exam included finding of normal inspection and range of motion), 949-  
16 60 (exam findings only regarding right ankle)). Plaintiff contends that "virtually  
17 none of the treatment records cited by the ALJ even include examinations of  
18 [Plaintiff's] back." ECF No. 12 at 19. To the contrary, the ALJ cited multiple  
19 records indicating normal musculoskeletal or back findings on exam (Tr. 526-27,  
20 550, 556-57, 717-18, 815-37, 884, 896) and other records showing normal exam  
21 findings except for findings related to the current non-back complaint (Tr. 444-45,

1 461-62, 486, 490, 713-14, 722-23, 727-28, 878, 949-60). Notably, Plaintiff does  
2 not point to any records demonstrating additional or significant back findings.

3 With regard to Plaintiff's right knee pain, the ALJ found the level of severity  
4 alleged is not supported by the record. Tr. 22. The ALJ observed there is virtually  
5 no mention of knee pain before September 2015, and in fact Plaintiff often denied  
6 knee pain. Tr. 22 (citing e.g., Tr. 429, 432, 444, 449, 495, 819). Most exam noted  
7 found no abnormalities in Plaintiff's presentation due to knee pain, back pain, or  
8 other musculoskeletal conditions and Plaintiff usually presented with normal gait,  
9 range of motion, muscle strength, muscle tone, and sensation. Tr. 22 (citing Tr.  
10 444-45, 461-62, 486, 490, 526-27, 550, 556-57, 669, 815-37). Significant right  
11 knee pain was first noted in September 2015 and imaging showed only mild  
12 degenerative changes in the knee, but other findings were consistent with a sprain.  
13 Tr. 22, 760, 880-84.

14 There were no further findings regarding the knee sprain until January 1,  
15 2016, when Plaintiff reported that she had gone dancing the previous night and  
16 slipped on some ice and subsequently experienced knee pain and swelling. Tr. 23,  
17 746. Ultimately, Dr. Griffiths diagnosed degenerative joint disease and a meniscal  
18 tear and performed surgery on the right knee in March 2016. Tr. 23, 775. In  
19 December 2016, Plaintiff complained of swelling and pain rated at 9 out of 10 in  
20 severity, but Dr. Griffiths found she had pain free range of motion, no effusion,  
21 and normal valgus/varus tests. Tr. 23, 892-93. He indicated that even though

1 Plaintiff reported swelling, he could not see any swelling, and that her history and  
2 examination were consistent with mild knee arthritis. Tr. 23, 892-93. The ALJ  
3 also noted that at a mental health appointment in December 2016, Plaintiff had  
4 “no reports of pain.” Tr. 23, 922.

5 The ALJ observed that thereafter, Plaintiff did not return to Dr. Griffiths,  
6 suggesting that her knee pain was resolved or controlled. Tr. 23. The ALJ also  
7 observed that Plaintiff visited the emergency room for a sprained ankle in February  
8 2017 but did not mention knee pain and examination of both knees was normal.  
9 Tr. 23, 894-900. In an April 2017 mental health treatment note, Plaintiff denied  
10 symptoms of physical pain. Tr. 23, 908. Furthermore, the ALJ noted that Plaintiff  
11 never reported she had to lie down several times a day due to pain, nor did any of  
12 her treating providers make such a recommendation. Tr. 23. To the contrary, the  
13 ALJ noted that long-time treating provider Dr. Jackson recommended that Plaintiff  
14 increase her exercise to 45 to 60 minutes of walking daily, five to seven times a  
15 week. Tr. 23, 955.

16 Plaintiff contends the ALJ’s characterization of various medical findings and  
17 records regarding Plaintiff’s knee pain are erroneous, ECF No. 12 at 19-20, but  
18 having reviewed the records and the ALJ’s findings, the Court concludes the ALJ’s  
19 interpretation of the evidence regarding Plaintiff’s knee problems is accurate and  
20 supported by substantial evidence. The ALJ found Plaintiff’s allegations regarding  
21 physical impairments are inconsistent with her reports to providers, and that her

1 presentation in the overall record does not support the level of limitation alleged.  
2 Tr. 22. The ALJ's interpretation of the evidence is reasonable and supported by  
3 the record. This is a clear and convincing reason for giving less weight to  
4 Plaintiff's alleged limitations.

5 Fourth, the ALJ found Plaintiff's activities are not entirely consistent with  
6 her allegations. Tr. 23-24. It is reasonable for an ALJ to consider a claimant's  
7 activities which undermine claims of totally disabling pain in assessing a  
8 claimant's symptom complaints. *See Rollins*, 261 F.3d at 857. However, it is  
9 well-established that a claimant need not "vegetate in a dark room" in order to be  
10 deemed eligible for benefits. *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987).  
11 Notwithstanding, if a claimant is able to spend a substantial part of her day  
12 engaged in pursuits involving the performance of physical functions that are  
13 transferable to a work setting, a specific finding as to this fact may be sufficient to  
14 discredit an allegation of disabling excess pain. *Fair v. Bowen*, 885 F.2d 597, 603  
15 (9th Cir. 1989). Furthermore, "[e]ven where [Plaintiff's daily] activities suggest  
16 some difficulty functioning, they may be grounds for discrediting the claimant's  
17 testimony to the extent that they contradict claims of a totally debilitating  
18 impairment." *Molina*, 674 F.3d at 1113.

19 The ALJ gave several examples of activities in the record which are  
20 inconsistent with Plaintiff's alleged limitations. Tr. 23-24. The ALJ noted that  
21 although Plaintiff alleges anxiety and recurrent panic attacks that are more severe

1 when she is away from home and around others, she uses public transportation  
2 regularly and goes out alone. Tr. 23-24, 66, 291. The ALJ observed that  
3 Plaintiff's complaints of anxiety, the need to lie down for several hours every day,  
4 and an inability to walk for more than five minutes are contradicted by her  
5 testimony that she enjoys taking her grandchildren for walks along a river and that  
6 she wades in the river and looks for rocks. Tr. 24, 68, 76. She testified that the  
7 walks take about an hour round trip and that she rests about every 15 minutes. Tr.  
8 24, 76. She said she is able to take her grandchildren for such walks because she  
9 uses an electric scooter. Tr. 24, 75.

10 The ALJ found this testimony is inconsistent with Plaintiff's allegations  
11 because it would be reasonable to expect uneven or loose surfaces or steep grades  
12 near a river. Tr. 24. Furthermore, the ALJ observed that if Plaintiff were using a  
13 scooter to go on walks, she would not need to rest every 15 minutes as she  
14 testified. Tr. 24. Moreover, the medical record does not reflect that a scooter was  
15 prescribed or that she told any provider she uses one. Tr. 24. To the contrary, the  
16 ALJ observed Plaintiff's medical providers encouraged her to increase her  
17 exercise, including walking. Tr. 24 (citing e.g., Tr. 955). Additionally, the ALJ  
18 noted that Plaintiff reported she went out dancing at least once during the relevant  
19 period. Tr. 24, 745. The ALJ reasonably found that even though Plaintiff may not  
20 have engaged in these activities on a daily basis, they suggest greater ability and  
21

1 fewer restrictions than alleged. Tr. 24; *see Valentine v. Comm’r of Soc. Sec.*  
2 *Admin.*, 574 F.3d 685, 693 (9th Cir. 2009).

3 Fifth, the ALJ found Plaintiff’s work history is not consistent with her  
4 allegations. Tr. 24. The claimant’s work record is an appropriate consideration in  
5 weighing the claimant’s symptom complaints. *Thomas*, 278 F.3d at 958-59. The  
6 ALJ observed that in September 2012, Plaintiff stated she worked at the  
7 fairgrounds sweeping and in 2015, Plaintiff stated she was looking for work. Tr.  
8 24, 456, 814. Plaintiff testified that her job at the fair was seasonal and she earned  
9 about \$528, which is less than substantial gainful activity. Tr. 60; Social Security  
10 Administration, *Program and Operations Manual System* (POMS) DI 10501.015  
11 (December 28, 2018).<sup>4</sup> Furthermore, Plaintiff’s mention that she was “looking for  
12 work” does not necessarily indicate that Plaintiff could find or maintain work. As  
13 a policy matter, claimants should be encouraged to pursue employment and should  
14 not be penalized for trying to do so. The Court concludes that Plaintiff’s brief  
15 employment and an expression of “looking for work” was not reasonably  
16 determined to be inconsistent with Plaintiff’s allegations. Although this is not a  
17 clear and convincing reason, any error is harmless because the ALJ gave other  
18 legally sufficient reasons. *See Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d  
19 1155, 1162 (9th Cir. 2008).

---

21 <sup>4</sup> Available at [www.secure.ssa.gov/poms.nsf/lnx/0410501015](http://www.secure.ssa.gov/poms.nsf/lnx/0410501015).

1 **B. Medical Opinion Evidence**

2 Plaintiff contends the ALJ failed to properly consider the opinions of treating  
3 provider Jason Roberts, ARNP; and examining psychologists N.K. Marks, Ph.D.,  
4 and R.A. Cline, Psy.D. ECF No. 12 at 4-16.

5 There are three types of physicians: “(1) those who treat the claimant (treating  
6 physicians); (2) those who examine but do not treat the claimant (examining  
7 physicians); and (3) those who neither examine nor treat the claimant but who  
8 review the claimant’s file (nonexamining or reviewing physicians).” *Holohan v.*  
9 *Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted). “Generally,  
10 a treating physician’s opinion carries more weight than an examining physician’s,  
11 and an examining physician’s opinion carries more weight than a reviewing  
12 physician’s.” *Id.* “In addition, the regulations give more weight to opinions that are  
13 explained than to those that are not, and to the opinions of specialists concerning  
14 matters relating to their specialty over that of nonspecialists.” *Id.* (citations omitted).

15 If a treating or examining physician’s opinion is uncontradicted, an ALJ may  
16 reject it only by offering “clear and convincing reasons that are supported by  
17 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).  
18 “However, the ALJ need not accept the opinion of any physician, including a  
19 treating physician, if that opinion is brief, conclusory and inadequately supported by  
20 clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228  
21 (internal quotation marks and brackets omitted). “If a treating or examining doctor’s

1 opinion is contradicted by another doctor’s opinion, an ALJ may only reject it by  
2 providing specific and legitimate reasons that are supported by substantial  
3 evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-31).

4 The opinion of an acceptable medical source, such as a physician or  
5 psychologist, is given more weight than that of an “other source.” 20 C.F.R. §§  
6 404.1527, 416.927 (2012); *Gomez v. Chater*, 74 F.3d 967, 970-71 (9th Cir. 1996).  
7 “Other sources” include nurse practitioners, physician assistants, therapists, teachers,  
8 social workers, spouses and other non-medical sources. 20 C.F.R. §§ 404.1513(d),  
9 416.913(d) (2013).<sup>5</sup> The ALJ is required to consider evidence from “other sources,”  
10 but may discount testimony from these sources if the ALJ “gives reasons germane to  
11 each witness for doing so.” *Molina*, 674 F.3d at 1104.

12 *1. R.A. Cline, Psy.D.*

13 Dr. Cline examined Plaintiff and completed a DSHS  
14 Psychological/Psychiatric Evaluation form in March 2016. Tr. 692-97. Dr. Cline

---

15  
16 <sup>5</sup> Effective March 27, 2017, the definition of an “acceptable medical source”  
17 changed to include some sources previously considered to be “other” sources. *See*  
18 20 C.F.R. §§ 404.1520, 416.920 (2017). However, for licensed audiologists,  
19 licensed advanced practice registered nurses, and licensed physician assistants, the  
20 change applies “only with respect to claims filed . . . on or after March 27, 2017”).  
21 20 C.F.R. §§ 404.1502(a)(6)-(8), 416.902(a)(6)-(8) (2017).



1 diagnosed borderline personality disorder, PTSD, and major depressive disorder,  
2 recurrent, in partial to full remission. Tr. 694. He assessed a marked limitation in  
3 the ability to communicate and perform effectively in a work setting and moderate  
4 limitations in the ability to learn new tasks, maintain appropriate behavior in a work  
5 setting, and in the ability to complete a normal work day and work week without  
6 interruptions from psychologically based symptoms. Tr. 695. He opined that  
7 Plaintiff “appears capable of at least simple, part time employment.” Tr. 695.

8 The ALJ found that “[a]lthough Dr. Cline did not review any treatment notes  
9 and did not provide specific rationale [regarding] each area of limitation,” the mild  
10 and moderate limitations he assessed “are generally consistent with the overall  
11 treatment record.” Tr. 27. The ALJ concluded, however, that the marked limitation  
12 assessed by Dr. Cline in communicating and performing effectively in a work setting  
13 is entitled to less weight. Tr. 27. Because Dr. Cline’s opinion regarding  
14 communicating and performing effectively in a work setting was contradicted by the  
15 opinions of Renee Eisenhauer, Ph.D., Tr. 112-14, and Dan Donahue, Ph.D., Tr. 142-  
16 44, the ALJ was required to provide specific and legitimate reasons for rejecting that  
17 portion of Dr. Cline’s opinion. *Bayliss*, 427 F.3d at 1216.

18 First, the ALJ found that the overall treatment record is inconsistent with Dr.  
19 Cline’s opinion that Plaintiff would have a marked limitation in communicating and  
20 performing effectively in a work setting. Tr. 27. The consistency of a medical  
21 opinion with the record as a whole is a relevant factor in evaluating a medical

1 opinion. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007); *Orn v. Astrue*,  
2 495 F.3d 625, 631 (9th Cir. 2007). The ALJ noted that the longitudinal record  
3 indicates Plaintiff consistently presented as cooperative and pleasant with no  
4 significant abnormality in affect, behavior, psychomotor activity, eye contact, or  
5 speech. Tr. 27 (citing Tr. 445-45, 462, 486, 490, 520, 527, 550, 557, 669, 713, 718,  
6 722-23, 728, 816, 819-20, 825, 829-30, 837, 878, 884, 889, 896, 904, 909, 915-16,  
7 923, 930, 936). Contrary to Plaintiff's assertion, these records reasonably speak to  
8 Plaintiff's ability to communicate and interact. ECF No. 12 at 12. Plaintiff asserts  
9 that, for example, one record cited by the ALJ states only that Plaintiff was "alert  
10 and awake" and "oriented to time and space," and does not speak to the marked  
11 limitation assessed by Dr. Cline. ECF No. 12 at 12 (citing Tr. 820). However, that  
12 record actually notes that Plaintiff complained of depression but was "very  
13 pleasant," "cheerful," and was well disposed with a normal affect, no agitation,  
14 anxiety or depression on exam. Tr. 27, 819-20. The ALJ also observed that the  
15 record reflects Plaintiff rarely had difficulty interacting with providers or that she  
16 missed or cancelled appointments due to her alleged anxiety and depression. Tr. 27  
17 (citing Tr. 520-22, 524-80, 768-96, 813-65, 902-46, 949-60).

18 Second, the ALJ found that Dr. Cline did not provide a specific rationale for  
19 the marked limitation assessed. Tr. 27. The quality of the explanation provided in  
20 a medical opinion is a factor relevant in evaluating the opinion. 20 C.F.R. §§  
21 404.1527(c), 416.927(c) ; *Lingenfelter*, 504 F.3d at 1042; *Orn*, 495 F.3d at 631; *see*

1 *also Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996) (indicating opinions on a  
2 check-box form or form reports which do not contain significant explanation of the  
3 basis for the conclusions may accorded little or no weight). Indeed, Dr. Cline did  
4 not include an explanation for the marked limitation and none of the findings in the  
5 report reasonably explain the degree of limitation assessed. A “marked” limitation  
6 is defined as “a very significant limitation,” Tr. 694, yet Dr. Cline indicated  
7 Plaintiff’s speech was within normal limits and she was cooperative for the most  
8 part, although she was rather dramatic and appeared to be scowling during the  
9 interview. Tr. 696. Without an explanation or findings supporting the marked  
10 limitation, the ALJ reasonably rejected it.

11 Plaintiff contends “an ALJ cannot reject a medical source opinion simply  
12 because that opinion does not include a ‘specific rationale’ for the limitations  
13 assessed.” ECF No. 12 at 13 (citing *Burrell v. Colvin*, 775 F.3d 1133, 1140 (9th  
14 Cir. 2014); *Garrison*, 759 F.3d at 1013).<sup>6</sup> Plaintiff erroneously interprets *Burrell*,  
15 which actually provides that, “an ALJ may discredit treating physicians’ opinions  
16 that are conclusory, brief, and unsupported by the record as a whole or by objective  
17 medical findings.” 775 F.3d at 1140 (quoting *Batson v. Comm’r of Soc. Sec.*

---

18  
19 <sup>6</sup> Plaintiff also cites *Popa v. Berryhill*, 868 F.3d 764, 770 (9th Cir. 2017), ECF No.  
20 12 at 13, which has been withdrawn from publication, amended and superseded.  
21 *See also* ECF No. 12 at 5.

1 *Admin.*, 359 F.3d 1190, 1195 (9th Cir.2004)). Nor does *Garrison* support  
2 Plaintiff's argument, as it states "an ALJ errs when he rejects a medical opinion or  
3 assigns it little weight while doing nothing more than ignoring it, asserting without  
4 explanation that another medical opinion is more persuasive, or criticizing it with  
5 boilerplate language that fails to offer a substantive basis for his conclusion." 759  
6 F.3d at 1012–13. The ALJ made none of the errors mentioned in *Garrison*, and the  
7 case is not applicable here.

8 Third, the ALJ found that Dr. Cline's narrative discussion contradicts the  
9 marked limitation in communicating and performing effectively in a work setting.  
10 Tr. 27. A medical opinion may be rejected by the ALJ if it contains  
11 inconsistencies. *Bray*, 554 F.3d 1219, 1228 (9th Cir. 2009). Despite assessing a  
12 marked limitation in the ability to communicate and perform effectively at work,  
13 Dr. Cline's narrative explanation indicates that Plaintiff is capable of at least  
14 simple, part time employment. Tr. 27, 695. Dr. Cline further opined that although  
15 Plaintiff's personality traits "may prove prob[le]matic when it comes to  
16 maintaining employment and interacting with others, but this alone is not sufficient  
17 to prevent her from working." Tr. 695. Although Plaintiff argues this is not a  
18 contradiction, ECF No. 12 at 15, the ALJ's analysis is reasonable since a marked  
19 limitation in this area is typically inconsistent with the ability to work, yet Dr.  
20 Cline specifically indicated her problems interacting with others would not prevent  
21

1 her from working.<sup>7</sup> Tr. 695. This is a specific, legitimate reason for rejecting the  
2 marked limitation.

3 2. *N.K. Marks, Ph.D.*

4 Dr. Marks examined Plaintiff and completed a DSHS  
5 Psychological/Psychiatric Evaluation form in March 2014. Tr. 508-11. She  
6 diagnosed depressive disorder and anxiety disorder and assessed marked limitations  
7 in the ability to ask simple questions or request assistance; to communicate and  
8 perform effectively in a work setting; and to set goals and plan independently, as  
9 well as moderate limitations in seven other functional areas. Tr. 509-510.

10 The ALJ gave less weight to Dr. Marks' opinion. Tr. 27. Because Dr. Marks'  
11 opinion was contradicted by the opinions of Dr. Eisenhauer and Dr. Donahue, Tr.  
12 112-14, 142-44, the ALJ was required to provide specific and legitimate reasons for  
13 rejecting that portion of Dr. Marks' opinion. *Bayliss*, 427 F.3d at 1216.

14 First, the ALJ found Dr. Marks' opinion is inconsistent with the longitudinal  
15 record. Tr. 27. As discussed *supra*, the consistency of a medical opinion with the  
16 longitudinal record is a relevant factor in considering that opinion. *Lingenfelter*, 504  
17 F.3d at 1042; *Orn*, 495 F.3d at 631. The ALJ again noted that Plaintiff consistently

---

18  
19 <sup>7</sup> Individual medical opinions are preferred over check-box reports. *See Crane v.*  
20 *Shalala*, 76 F.3d 251, 253 (9th Cir. 1996); *Murray v. Heckler*, 722 F.2d 499, 501  
21 (9th Cir. 1983).

1 presented as cooperative and pleasant, with no significant abnormality in affect,  
2 behavior, psychomotor activity, eye contact, or speech. Tr. 27 (citing Tr. 445-45,  
3 462, 486, 490, 520, 527, 550, 557, 669, 713, 718, 722-23, 728, 816, 819-20, 825,  
4 829-30, 837, 878, 884, 889, 896, 904, 909, 915-16, 923, 930, 936). The ALJ  
5 reasonably determined that the limitations assessed by Dr. Marks are inconsistent  
6 with such findings in the overall record. This is a specific, legitimate reason for  
7 rejecting Dr. Marks' opinion.

8 Second, the ALJ found Dr. Marks did not provide a specific rationale or  
9 objective findings to substantiate the limitations assessed. Tr. 27. As discussed  
10 *supra*, this is a specific, legitimate reason for giving less weight to a medical  
11 opinion. The ALJ observed the mental status exam findings reported by Dr. Marks  
12 were largely within normal limits, Tr. 27, 511, reasonably suggesting the limitations  
13 assessed exceed those findings. Indeed, Dr. Marks found Plaintiff to be cooperative  
14 and pleasant and her thought process and content, orientation, perception, memory,  
15 concentration, abstract thought, and insight and judgment were within normal limits.  
16 Tr. 511.

17 Plaintiff contends that her scores in the "severely anxious" range on the Beck  
18 Anxiety Inventory and in the moderate range on the Beck Depression Inventory  
19 support Dr. Marks' opinion. ECF No. 12 at 14. However, consistent with the ALJ's  
20 finding, there is no indication in the opinion how those ratings translate into the  
21 limitations assessed by Dr. Marks. It is the ALJ's duty to resolve conflicts and

1 ambiguity in the medical and non-medical evidence. *See Morgan v. Comm’r of Soc.*  
2 *Sec. Admin.*, 169 F.3d 595, 599-600 (9th Cir. 1999). It is not the role of the court to  
3 second-guess the ALJ. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). The  
4 ALJ’s reasons for rejecting Dr. Marks’ opinion are specific, legitimate, and  
5 supported by substantial evidence.

6 3. *Jason Roberts, ARNP*

7 In March 2014, Mr. Roberts completed a DSHS Physical Functional  
8 Evaluation form and noted diagnoses of lumbago/sciatica and morbid obesity. Tr.  
9 512-14. He opined Plaintiff is limited to sedentary work and recommended an  
10 independent medical exam and an MRI of the lumbar spine. Tr. 514.

11 The ALJ gave less weight to Mr. Roberts’ opinion that Plaintiff is limited to  
12 sedentary work due to back pain. Tr. 25. As an ARNP, Mr. Roberts is an “other  
13 source” under the regulations. 20 C.F.R. §§ 404.1513(d), 416.913(d) (2013).  
14 Thus, the ALJ was required to cite germane reasons for rejecting the opinion. *See*  
15 *Molina*, 674 F.3d at 1104.

16 First, the ALJ found Mr. Roberts did not provide a completed evaluation with  
17 objective findings consistent with the level of limitations in the opinion. Tr. 25. A  
18 medical opinion may be rejected if it is unsupported by medical findings. *Bray*, 554  
19 F.3d at 1228; *Batson*, 359 F.3d at 1195; *Thomas*, 278 F.3d at 957; *Tonapetyan v.*  
20 *Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001); *Matney v. Sullivan*, 981 F.2d 1016,  
21 1019 (9th Cir.1992). The ALJ observed Mr. Roberts’ findings were “mostly

1 unremarkable,” and noted normal gait, range of motion, muscle strength, stability  
2 reflexes, and sensation on examination. Tr. 25-26 (citing Tr. 518).

3 Plaintiff contends the ALJ overlooked the lumbar spine evaluation completed  
4 by Mr. Roberts, which noted Plaintiff’s normal gait; paraspinous lumbar tenderness;  
5 pain with motion; no pain in the left or right greater trochanter, buttock, and SI joint;  
6 normal left straight leg raises; and back pain only with right straight leg raises. Tr.  
7 518. Mr. Roberts also found Plaintiff’s lumbar active range of motion was normal  
8 “with limiting factors of pain.” Tr. 518. These findings were reasonably  
9 categorized by as “mostly” unremarkable as they do not demonstrate or support any  
10 particular limitation. Even if the ALJ should not have called the lumbar spine  
11 findings “unremarkable,” Mr. Roberts advised an MRI of the lumbar spine. Tr. 518.  
12 The ALJ noted an MRI of Plaintiff’s spine from April 2014 found only mild  
13 degenerative disc disease at the lumbosacral disc. Tr. 22, 840. Thus, this supports  
14 the conclusion that Mr. Roberts findings do not support the degree of limitation  
15 assessed due to back pain.

16 Second, the ALJ found Mr. Roberts’ opinion is inconsistent with the overall  
17 treatment record. Tr. 26. The consistency of a medical opinion with the record as a  
18 whole is a relevant factor in evaluating a medical opinion. *Lingenfelter*, 504 F.3d  
19 1028, 1042 (9th Cir. 2007); *Orn*, 495 F.3d at 631. The ALJ determined that the  
20 record overall indicates only mild spine abnormalities on imaging and few abnormal  
21 clinical findings. Tr. 26. As discussed *supra*, the ALJ thoroughly reviewed the



1 record regarding Plaintiff's back pain. *See* Tr. 22. The ALJ reasonably found Mr.  
2 Roberts' opinion is inconsistent with the degree of limitation otherwise supported by  
3 the record. This is a germane reason for rejecting the opinion.

#### 4 **CONCLUSION**

5 Having reviewed the record and the ALJ's findings, this Court concludes the  
6 ALJ's decision is supported by substantial evidence and free of harmful legal error.  
7 Accordingly,

8 1. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.

9 2. Defendant's Motion for Summary Judgment, **ECF No. 17**, is  
10 **GRANTED**.

11 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
12 Order and provide copies to counsel. Judgment shall be entered for Defendant and  
13 the file shall be **CLOSED**.

14 **DATED** July 9, 2019.

15  
16 *s/ Rosanna Malouf Peterson*  
ROSANNA MALOUF PETERSON  
17 United States District Judge  
18  
19  
20  
21